

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
Improving Public Safety)
Communications in the 800 MHz Band)
)
Consolidating the 900 MHz Industrial/)
Land Transportation and Business Pool)
Channels)

WT Docket No. 02-55

To: The Commission

**COMMENTS OF CONSUMERS ENERGY COMPANY
IN SUPPORT OF PETITIONS FOR RECONSIDERATION**

Consumers Energy Company ("Consumers"), by and through its undersigned counsel, hereby submits these Comments supporting, in part, the Petitions for Reconsideration of the *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order* ("*Report and Order*")¹ filed by Entergy Corporation and Entergy Services, Inc. ("Entergy") and Exelon Corporation,² as well as the Petition for Reconsideration of the *Supplemental Order and Order on Reconsideration* ("*Supplemental Order*")³ jointly filed by the American Petroleum

¹ In re Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels; WT Docket No. 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) [hereinafter *Report and Order*].

² Petition for Reconsideration of Entergy Corporation and Entergy Services, Inc., WT Docket No. 02-55 (Dec. 22, 2004) [hereinafter *Entergy Petition*]; Petition for Reconsideration of Exelon Corporation, WT Docket No. 02-55 (Dec. 22, 2004) [hereinafter *Exelon Petition*].

³ In re Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels; WT Docket No. 02-55, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) [hereinafter *Supplemental Order*].

Institute ("API") and the United Telecom Council ("UTC")⁴ in the above-captioned docket, pursuant to Section 1.429 of the Federal Communications Commission's ("FCC's") rules.⁵

Consumers also responds to the Reply to Petitions for Clarification and Reconsideration filed by the Critical Infrastructure Reply Coalition ("Coalition").⁶

Although the petitioners have requested reconsideration on several issues, Consumers specifically agrees that the FCC should revise the interim interference standards for Critical Infrastructure Industry ("CII") licensees. Consumers also supports the requests for the expansion of the Public Safety channel set aside and for clarification of the relocation rules for systems operating in both border and non-border areas.

I. THE FCC SHOULD INCREASE INTERFERENCE PROTECTION FOR CII LICENSEES DURING THE BAND RECONFIGURATION

Consumers supports the requests of API and UTC for improved interference protection for CII licensees during the rebanding process.⁷ Specifically, the FCC should reinstate the full interference protection rules adopted in the *Report and Order* during the band reconfiguration, or should at least grant CII licensees the same interference protection as Public Safety licensees.

In the *Report and Order*, the FCC adopted rules to protect non-cellular licensees operating in the 851-861 MHz band from unacceptable interference. Although the FCC initially granted this interference protection to non-cellular licensees if the median power of their

⁴ Petition of the American Petroleum Institute and the United Telecom Council, WT Docket No. 02-55 (Mar. 10, 2005) [hereinafter *API/UTC Petition*].

⁵ 47 C.F.R. § 1.429 (2004).

⁶ Reply to Petitions for Clarification and Reconsideration of United Telecom Council, National Rural Electric Cooperative Association, American Petroleum Institute, Edison Electric Institute, Association for Metropolitan Water Agencies, American Water Works Association and American Public Power Association, WT Docket No. 02-55 (Feb. 17, 2005) [hereinafter *Coalition Reply*].

⁷ *API/UTC Petition* at 4-9.

received signal at the area of interference is equal to or greater than -104 dBm for vehicular mobile units or -101 dBm for portable units,⁸ it subsequently adopted an interim standard to limit such protection to licensees meeting a signal strength threshold of -88 dBm for vehicular mobile units or -85 dBm for portable units.⁹ The FCC provided additional protection to Public Safety licensees that fail to meet the interim standards but declined to extend that protection to CII licensees.¹⁰

The FCC should reinstate full interference protection during the band reconfiguration because many CII licensees lack the funding, frequencies, and time to upgrade their systems to meet the interim thresholds. As with Public Safety licensees, CII licensees have budgetary constraints and must undergo a lengthy process before obtaining any funds.¹¹ Even if a CII licensee could acquire sufficient funding, the licensing freeze would prevent that licensee from accessing any frequencies it would need to avoid interference during the pendency of the band reconfiguration. By the time the CII licensee could acquire sufficient funds, locate fill-in transmitter locations, undergo coordination, and purchase, install, and test equipment, the band reconfiguration could have ended without the licensee having received any interference protection for its mission-critical communications.¹² Moreover, such fill-in service would only

⁸ *Report and Order*, 19 FCC Rcd at 15029 ¶ 105.

⁹ *Supplemental Order*, 19 FCC Rcd at 25137 ¶ 39.

¹⁰ *Id.* at 25140 ¶ 42.

¹¹ *API/UTC Petition* at 6.

¹² *Id.*

be needed to protect the system during rebanding and would probably not be needed once the full interference protections are effective.¹³

Alternatively, the FCC should extend the additional Public Safety interference protection to CII licensees, such as protection of a number of control channels and as many voice channels as possible.¹⁴ This additional protection would not preclude interference at the outer portions of the protected service area but should mitigate the problem.¹⁵ Although CII licensees are not eligible for this additional protection, Consumers agrees with API and UTC that the FCC's rationale for distinguishing between Public Safety and CII licensees is arbitrary and capricious.¹⁶

II. CII LICENSEES SHOULD RECEIVE "SAFETY VALVE" INTERFERENCE PROTECTION

The FCC should extend "safety valve" interference protection to CII licensees. Under the *Report and Order*, "when the continued presence of interference constitutes a clear and imminent danger to life or property," the FCC "will require the interference source(s) to immediately discontinue operation, pending the identification and application of corrective measures."¹⁷

Although the FCC limited this relief to Public Safety licensees,¹⁸ CII licensees should qualify for safety valve protection because they also use their communications systems to protect the safety of life and property. As the FCC itself has recognized, "the very nature of the services

¹³ If licensees are required to install temporary facilities to obtain interference protection during the rebanding process, the FCC should clarify that such expenses are a reimbursable cost of band realignment and are fully reimbursable by Nextel. The FCC should also make additional channels available to provide such fill-in coverage.

¹⁴ *Supplemental Order*, 19 FCC Rcd at 25140 ¶ 42.

¹⁵ *API/UTC Petition* at 4-5; *see Supplemental Order*, 19 FCC Rcd at 25139-40 ¶ 42.

¹⁶ *API/UTC Petition* at 4-5.

¹⁷ *Report and Order*, 19 FCC Rcd at 15044 ¶ 140.

¹⁸ *Id.* at 15044 ¶ 140 n.381.

provided by . . . [CII entities] involves potential hazard to life and property[,] and . . . CII entities often work hand in hand with public safety officials at the scene of an accident."¹⁹ The FCC also noted that "reliable CII radio communications have long proven essential in speeding recovery from natural or man-made disasters."²⁰ Thus, because of the similarities between Public Safety and CII licensees, Consumers agrees with Entergy and the Coalition that "the FCC should amend section 90.674(c)(3) to add the words 'or CII' after every occurrence of the term 'public safety.'"²¹

III. CII LICENSEES SHOULD HAVE ACCESS TO VACATED ESMR SPECTRUM THROUGHOUT THE FIVE-YEAR SET ASIDE

Consumers agrees with Exelon and the Coalition that the FCC should expand access to ESMR-vacated channels to include CII entities for the first five years following the completion of band reconfiguration in each NPSPAC region.²²

Although the FCC restricted eligibility for this vacated spectrum to Public Safety licensees for the first three years after rebanding,²³ there is no justification for the disparate treatment of Public Safety and CII licensees with respect to this licensing preference. As with Public Safety licensees, CII licensees need additional spectrum during the initial three-year period to expand their operations and to update their technologies in accordance with community

¹⁹ *Id.* at 14974 ¶ 4 n.11; see 47 U.S.C. § 309(j)(2) (2001) (defining "public safety radio services" as "including private internal radio services used by . . . non-government entities . . . that (i) are used to protect the safety of life, health, or property . . ."); House Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 192 (stating that section 309(j)(2) covers "'private internal radio services' used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments.").

²⁰ *Report and Order*, 19 FCC Rcd at 14974 ¶ 4 n.11.

²¹ *Entergy Petition* at 8; see *Coalition Reply* at 10-11.

²² *Exelon Petition* at 5; *Coalition Reply* at 7-10.

²³ *Report and Order*, 19 FCC Rcd at 15052 ¶ 152.

growth.²⁴ Lack of spectrum for CII would also mean that a CII licensee could be foreclosed from improving signal coverage to the requisite thresholds necessary to obtain interference protection. In addition, as explained above, the FCC has recognized that Public Safety and CII licensees use their systems to protect the safety of life and property and routinely cooperate at the scene of accidents and natural disasters. Consumers also agrees with the Coalition that Public Safety and CII licensees often operate under similar financial constraints and have common funding priorities.²⁵ Thus, based on these similarities, the FCC should afford Public Safety and CII licensees similar regulatory treatment.

IV. THE FCC SHOULD NOT REQUIRE LICENSEES OPERATING IN BOTH BORDER AND NON-BORDER AREAS TO RELOCATE MORE THAN ONCE

Consumers also supports the Coalition's request for clarification that licensees operating systems that straddle Line A only have to relocate once, unless they voluntarily agree to another arrangement.²⁶ In the *Report and Order*, the FCC warned of the possibility of a "double border" problem "if the overall U.S. band plan differs from a band plan for the border regions"²⁷ but it neglected to clarify the relocation rules for licensees operating systems that fall on both sides of Line A.

The double border problem directly implicates Consumers. As the Coalition noted in its Reply,²⁸ Consumers operates an expansive private land mobile system in Michigan. This system uses dozens of discrete 800 MHz frequency pairs in Border Regions 3 and 7, as well as several

²⁴ *Exelon Petition* at 5; *Coalition Reply* at 8-9.

²⁵ *Coalition Reply* at 7-10.

²⁶ *Id.* at 16-17.

²⁷ *Report and Order*, 19 FCC Rcd at 15063 ¶ 176.

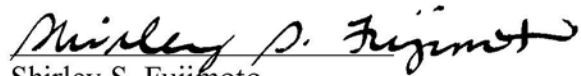
²⁸ *Coalition Reply* at 17 n.25.

frequency pairs below Line A. To protect the integrity of this system, and prevent disruption to its critical communications, the FCC should clarify that Consumers and similarly situated licensees will only have to relocate once, unless they voluntarily agree to a phased relocation.

WHEREFORE, THE PREMISES CONSIDERED, Consumers respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine Biso, do hereby certify that on this 21st day of April 2005, a copy of the foregoing "Comments of Consumers Energy Company" was sent by first-class mail, postage prepaid, unless otherwise indicated, to each of the following:

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/s/Christine Biso_____
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